

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BAYER HEALTHCARE AG, ALCON, INC. )	)	
and ALCON RESEARCH, LTD., )	)	
	)	
Plaintiffs, )	)	
	)	
v. )	)	Civil Action No. 06-234
	)	
TEVA PHARMACEUTICALS USA, INC., )	)	
	)	
Defendant. )	)	

**CONSENT JUDGMENT AND ORDER**

Plaintiffs Bayer HealthCare AG and Bayer Pharmaceuticals Corporation (collectively “Bayer”) and Defendant Teva Pharmaceuticals USA, Inc. (“Teva”) having agreed to terms and conditions representing a negotiated settlement of the portion of this action relating to Bayer’s U.S. Patent Nos. 4,990,517 (the “’517 Patent”) and 5,607,942 (the “’942 Patent”), having set forth those terms and conditions in a Settlement Agreement, and having consented to the entry of this Judgment, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. Claims 1, 2, 8, 9, and 11 of the ‘517 Patent and Claims 1, 2, 3, 4, 5, and 7 of the ‘942 Patent are valid.
3. The ‘517 Patent and ‘942 Patent are enforceable.
4. The moxifloxacin tablet product that is described in, and the subject of, Teva’s Abbreviated New Drug Application (“ANDA”) No. 77-437 and/or the use thereof infringes Claims 1, 2, 8, 9, and 11 of the ‘517 Patent and Claims 1, 2, 3, 4, 5, and 7 of the ‘942 Patent.

5. The moxifloxacin ophthalmic product that is described in, and the subject of, Teva's ANDA No. 78-073 and/or the use thereof infringes Claims 1, 2, 8, and 11 of the '517 Patent and Claims 1, 2, 3, 4, 5, and 7 of the '942 Patent.

6. Teva and its Affiliates (as defined in the Settlement Agreement) shall not make, offer for sale, or sell the products that are described in ANDA Nos. 77-437 and 78-073 prior to the dates set forth in the Settlement Agreement, and then only as set forth in the Settlement Agreement.

7. Each of the parties shall bear its own costs and attorney fees.

8. Judgment is hereby entered in favor of Bayer and against Teva on Bayer's claims of infringement of the '517 Patent and '942 Patent.

9. The portion of this matter relating to U.S. Patent No. 6,716,830, which is being asserted by Alcon, is not subject to and not affected by this Judgment.

10. The parties waive any right to appeal from this Judgment.

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2008.

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Sue L. Robinson  
United States District Judge

JOINTLY SUBMITTED BY



Frederick L. Cottrell, III (#2555)  
cottrell@rlf.com  
Jeffrey L. Moyer (#3309)  
moyer@rlf.com  
Anne Shea Gaza (#4093)  
gaza@rlf.com  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
(302) 651-7700 (telephone)  
(302) 651-7701 (facsimile)

OF COUNSEL:  
Bruce R. Genderson  
Adam L. Perlman  
David I. Berl  
Dov P. Grossman  
Stanley E. Fisher  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005  
(202) 434-5000 (telephone)  
(202) 434-5029 (facsimile)

Attorneys for Plaintiffs  
Bayer HealthCare AG and  
Bayer Pharmaceuticals, Corp.

/s/ Richard D. Kirk

Richard D. Kirk (#0922)  
rkirk@bayardfirm.com  
Ashley B. Stitzer (#3891)  
astitzer@bayardfirm.com  
Bayard, P.A.  
222 Delaware Ave., Suite 900  
P.O. Box 25130  
Wilmington, DE 19899  
(302) 655-5000 (telephone)

OF COUNSEL:  
Bruce M. Gagala  
M. Daniel Hefner  
Douglas A. Robinson  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza  
180 N. Stetson Avenue, Suite 4900  
Chicago, IL 60601  
(312) 616-5600 (telephone)  
(312) 616-5700 (facsimile)

Attorneys for Defendant  
Teva Pharmaceuticals USA, Inc.